

JUL 16 1979 - 3 25 PM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF LEASE AND AGREEMENT dated as of July 13, 1979, (this "Assignment"), by and between BRAE CORPORATION, a Delaware corporation (together with its successors and assigns, "BRAE"), and MORGAN GUARANTY TRUST COMPANY OF NEW YORK, as Trustee, a corporation organized under the laws of the State of New York (the "Trustee").

WHEREAS BRAE has entered into an Equipment Trust Agreement dated as of June 1, 1979 (such Equipment Trust Agreement, together with any amendments or supplements thereto, hereinafter called the "Agreement");

WHEREAS BRAE and Berlin-Mills Railway, Inc., (the "Lessee") have entered into a lease of Equipment (as defined in the Agreement) dated as of November 2, 1978 (such lease, together with any amendments or supplements thereto, hereinafter called the "Lease"), providing for the leasing by BRAE to the Lessee of units of the Trust Equipment (as defined in the Agreement);

WHEREAS the Lease may also cover the leasing to the Lessee of other equipment not included as part of the Trust Equipment; and

WHEREAS in order to provide security for the obligations of BRAE under the Agreement and as an inducement to the investor for which the Trustee is acting to purchase Trust Certificates (as defined in the Agreement), BRAE agrees to assign for security purposes its right in, to and under the Lease to the Trustee as and only to the extent that the Lease relates to the Trust Equipment;

NOW, THEREFORE, in consideration of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. BRAE hereby assigns, transfers and sets over unto the Trustee, as collateral security for the payment and performance of BRAE's obligations under the Agreement, all of BRAE's right, title and interest, powers, privileges and other benefits under the Lease as and only to the extent that the Lease relates to the Trust Equipment set forth in Annex A hereto, including, with-

out limitation, all rights to receive and collect all rentals, profits and other sums payable to or receivable by BRAE from the Lessee under or pursuant to the provisions of the Lease to the extent that the same are payable in respect of such Trust Equipment, whether as rent, casualty payment, indemnity, liquidated damages or otherwise (such moneys hereinafter called the "Payments"); provided, however, that unless an Event of Default under the Agreement, or any event which, with notice or lapse of time or both, would constitute such an Event of Default, shall have occurred and be continuing, it is understood that BRAE shall be entitled to collect and receive all such Payments and to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an event of default specified in the Lease, and to apply all Payments to which BRAE is entitled to the payment of any and all of BRAE's obligations under the Agreement and to retain the balance, if any. In furtherance of the foregoing assignment, but subject to the foregoing provisions of this paragraph, BRAE hereby irrevocably authorizes and empowers the Trustee in its own name, or in the name of its nominee, or in the name of BRAE or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which BRAE is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof. Whenever a Lease covers other equipment not included as part of the Trust Equipment and the amount of any payment due to BRAE under such Lease as car hire payments (including both straight and incentive per diem), mileage charges or other rental revenues is calculated on an aggregate basis for all equipment leased thereunder, for the purposes of this Assignment an amount equal to the Assigned Fraction (as hereinafter defined) of each such payment shall be deemed to be payable with respect to such Trust Equipment leased under such Lease. The term "Assigned Fraction" as used herein shall mean a fraction the numerator of which shall be the number of units of equipment comprising such Trust Equipment leased under such Lease and the denominator of which shall be the aggregate number of units of equipment (including such units of Trust Equipment) at the time leased under such Lease.

2. This Assignment is executed only as security

for the obligations of BRAE under the Agreement and, therefore, the execution and delivery of this Assignment shall not subject the Trustee to, or transfer, or pass, or in any way affect or modify, the liability of BRAE under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of BRAE to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against BRAE or persons other than the Trustee.

3. To protect the security afforded by this Assignment, BRAE agrees as follows:

(a) BRAE will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides is to be performed by BRAE.

(b) At BRAE's sole cost and expense, BRAE will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of BRAE under the Lease.

(c) Should BRAE fail to make any payment or to do any act which this Assignment requires BRAE to make or do, then the Trustee, but without obligation so to do, after first making written demand upon BRAE and affording BRAE a reasonable period of time within which to make such payment or do such act, but without releasing BRAE from any obligation hereunder, may make or do the same in such manner and to such extent as the Trustee may deem necessary to protect the security provided hereby, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Trustee, and also the right to perform and discharge each and every obligation, covenant and agreement of BRAE contained in the Lease; and, in exercising any such powers, the Trustee may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorney's fees, and BRAE will reimburse the Trustee for such costs, expenses and fees.

4. Upon the full discharge and satisfaction of all of BRAE's obligations under the Agreement and this Assignment, all rights herein assigned to the Trustee shall terminate, and all estate, right, title and interest of the Trustee in and to the Lease shall revert to BRAE, and the Trustee shall take such action as BRAE may reasonably request to confirm BRAE's estate, right, title and interest in and to the Lease.

5. BRAE will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Trustee in order to confirm or further assure the interests of the Trustee hereunder.

6. If an Event of Default shall occur and be continuing under the Agreement, the Trustee may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Trustee hereunder. The Trustee will give written notice to BRAE and the Lessee of any such assignment.

7. This Assignment shall be governed by the laws of the State of New York, but the parties shall be entitled to all rights conferred by the laws of the United States of America permitting filing with the Interstate Commerce Commission.

8. This Assignment shall not be deemed delivered by BRAE until accepted by the Trustee in New York, New York.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective names, by officers thereunto duly authorized, and their respective seals to be affixed and duly attested, all as of the date

first above written.

[Corporate Seal]

Attest:

Michael E. Everett  
Assistant Secretary

BRAE CORPORATION,

by

[Signature]  
Vice President

MORGAN GUARANTY TRUST COMPANY  
OF NEW YORK, as Trustee,

by

[Signature]  
Trust Officer

[Corporate Seal]

Attest:

[Signature]  
Assistant Secretary

STATE OF NEW YORK , )  
 ) ss.:  
 COUNTY OF NEW YORK ,)

On this 13th day of July 1979 , before me personally appeared Donald H. Gleason , to me personally known, who, being by me duly sworn, says that he is Vice President of Operations of BRAE CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its By-laws and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

My Commission expires

*William Betz*  
 Notary Public

WILLIAM BETZ  
 NOTARY PUBLIC, State of New York  
 No. 24-4691707  
 Qualified in Kings County  
 Cert. filed in New York County  
 Commission Expires March 30, 1981

STATE OF NEW YORK, )  
 ) ss.:  
 COUNTY OF NEW YORK,)

On this 13th day of July 1979 , before me personally appeared *P.J. Crooks* , to me personally known, who, being by me duly sworn, says that he is a Trust Officer of MORGAN GUARANTY TRUST COMPANY OF NEW YORK, a New York corporation, that one of the seals affixed to the foregoing instrument is the seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

My Commission expires

*Maureen McShane*  
 Notary Public

MAUREEN McSHANE  
 NOTARY PUBLIC, State of New York  
 No. 01 MC 4649500  
 Qualified in Kings County  
 Certificate Filed in New York County  
 Commission Expires March 30, 1981

## ANNEX A

<u>No. of Units</u>	<u>Road Numbers</u>	<u>Description</u>	<u>AAR Mechanical Designation</u>
300	BMS 00201- BMS 00500	50'6", 70-ton	XM